

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Rocky Mountain Broadcasting Company	)	Facility I.D. No. 68717
Licensee of Station KMTF(TV)	)	NAL/Acct. No. 0741420004
Helena, Montana	)	FRN: 0003710407

**NOTICE OF APPARENT  
LIABILITY FOR FORFEITURE**

**Adopted: April 26, 2007****Released: April 30, 2007**

By the Chief, Video Division, Media Bureau:

**I. INTRODUCTION**

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”) issued pursuant to Section 503(b) of the Communications Act of 1934, as amended (the “Act”), and Section 1.80 of the Commission’s Rules (the “Rules”),<sup>1</sup> by the Chief, Video Division, Media Bureau pursuant to authority delegated under Section 0.283 of the Rules,<sup>2</sup> we find that Rocky Mountain Broadcasting Company (the “Licensee”), licensee of Station KMTF(TV), Helena, Montana (the “Station”), apparently willfully and repeatedly violated Section 73.3526(e)(11)(ii) of the Rules, by failing to place in the station’s public inspection file all required records concerning its compliance with the children’s programming commercial limits.<sup>3</sup> We also find that the Licensee apparently willfully and repeatedly violated Section 73.3526(e)(11)(iii) of the Rules by failing to publicize the existence and location of the Station’s Children’s Television Programming Reports and Section 73.673 of the Rules by failing to provide to publishers of program guides information identifying the Station’s programs that were specifically designed to educate and inform children. Based upon our review of the facts and circumstances before us, we conclude that the Licensee is apparently liable for a monetary forfeiture in the amount of four thousand dollars (\$4,000) for its violation of Section 73.3526 and is admonished for its violation of Section 73.673.

**II. BACKGROUND**

2. Section 73.3526 of the Rules requires a commercial broadcast licensee to maintain a public inspection file containing specific types of information related to station operations.<sup>4</sup> Pursuant to subsection 73.3526(e)(11)(ii), each commercial television broadcast station is required to place in its public inspection file, on a quarterly basis, records sufficient to allow substantiation of the licensee’s certification, in its renewal application, of its compliance with the children’s television commercial limits imposed by Section 73.670 of the Rules.<sup>5</sup> This subsection of Section 73.3526 requires licensees to place

<sup>1</sup> 47 U.S.C. § 503(b); 47 C.F.R. § 1.80.

<sup>2</sup> See 47 C.F.R. § 0.283.

<sup>3</sup> See 47 C.F.R. § 73.3526(e)(11)(ii).

<sup>4</sup> See 47 C.F.R. § 73.3526.

<sup>5</sup> See 47 C.F.R. § 73.670.

such records concerning commercial limits for each quarter in the station's public inspection file by the tenth day of the succeeding calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify the licensee's rule violation.<sup>6</sup>

3. Under the Commission's rules implementing the Children's Television Act of 1990 (CTA),<sup>7</sup> each television broadcast station licensee has an obligation, during its license term, to air programming that serves the educational and informational needs of children through both the licensee's overall programming and programming "specifically designed" to educate and inform children ("core programming").<sup>8</sup> The Commission's rules require commercial licensees to provide information to the public about the shows they air to fulfill their obligation. Subsection 73.3526(e)(11)(iii) of the Rules requires each commercial television broadcast station to prepare and place in its public inspection file a Children's Television Programming Report (FCC Form 398) for each calendar quarter reflecting, *inter alia*, the efforts it has made during the quarter to serve the educational needs of children. As set forth in subsection 73.3526(e)(11)(iii), licensees are also required to file the reports with the Commission and to publicize for the public the existence and location of the reports. In addition, licensees are required to provide to publishers of program guides, information identifying programming specifically designed to educate and inform children, including an indication of the age group for which the program is intended.<sup>9</sup>

4. On December 1, 2005, the Licensee filed its license renewal application (FCC Form 303-S) for Station KMTF(TV) (the "Application") (File No. BRCT-20051201CIX). In response to Section IV, Question 3 of the Application, the Licensee stated that, during the previous license term, it had failed to timely place in its public inspection file all of the documentation required by Section 73.3526 of the Rules. In Exhibit 17, the Licensee indicated that in reviewing the public inspection file in preparation for filing the Application, it discovered that records concerning compliance with the commercial limits in children's programming for the third quarter of 2000 through the second quarter of 2001, and the fourth quarter of 2002 were missing. The Licensee claimed that all of these documents were placed in the public file in November 2005.

5. Further, in response to Section IV, Question 10 of the Application, the Licensee stated that, it had failed to publicize the existence and location of the Station's Children's Television Programming Reports, as set forth in Section 73.3526(e)(11)(iii) of the Rules. In Exhibit 24, it indicated that, it publicized the existence and location of the Station's Children's Television Programming Reports "from the August 15, 1998 sign-on through October of 1999." The Licensee claimed that the time broker of the Station changed in October 1999. The Licensee stated that although the new time broker claimed that it had publicized the existence and location of the Station's Children's Television Programming Reports, the Licensee was "only able to find a record of one airing of the Children's Program Report location between October of 1999 and June of 2001." The Licensee reported that in July 2001, the network affiliation was changed, and that the existence and location of the Station's Children's Television Programming Reports was publicized from July 2001 throughout the remainder of the license term.

6. In response to Section IV, Question 9 of the Application, the Licensee stated that, the Station failed to provide information identifying each core program aired on its station, including an indication of the target child audience, to publishers of program guides. In Exhibit 23, the Licensee

<sup>6</sup> See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

<sup>7</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. Sections 303a, 303b and 394.

<sup>8</sup> 47 C.F.R. § 73.671.

<sup>9</sup> See 47 C.F.R. § 73.673.

indicated that for approximately one year and a half, it did not provide this information to program guide publishers. The Licensee asserted that although this information had previously been submitted to program guide publishers, it was omitted from program schedule publications after its affiliation change in July 2001. The Licensee claimed that personnel responsible for submitting such information believed that its new affiliate was providing the information to program guide publishers and that personnel only learned of the omission in January 2003. The Licensee reported that it provided the required information to publishers of program guides when it discovered the error.

### III. DISCUSSION

7. The Licensee's failure to place in its Station KMTF(TV)'s public inspection file all required records concerning children's programming commercial limits constitutes an apparent willful and repeated violation of Section 73.3526(e)(11)(ii). This *NAL* is issued pursuant to Section 503(b)(1)(B) of the Act. Under that provision, any person who is determined by the Commission to have willfully or repeatedly failed to comply with any provision of the Act or any rule, regulation, or order issued by the Commission shall be liable to the United States for a forfeiture penalty.<sup>10</sup> Section 312(f)(1) of the Act defines willful as "the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate" the law.<sup>11</sup> The legislative history to Section 312(f)(1) of the Act clarifies that this definition of willful applies to both Sections 312 and 503(b) of the Act,<sup>12</sup> and the Commission has so interpreted the term in the Section 503(b) context.<sup>13</sup> Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."<sup>14</sup>

8. The Commission's *Forfeiture Policy Statement* and Section 1.80(b)(4) of the Rules establish a base forfeiture amount of \$10,000 for violation of Section 73.3526.<sup>15</sup> In determining the appropriate forfeiture amount, we may adjust the base amount upward or downward by considering the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>16</sup>

9. In this case, the Station's public inspection file was missing required documents for five quarters during the license term.<sup>17</sup> In addition, the Licensee failed to maintain records sufficient to

<sup>10</sup> 47 U.S.C. § 503(b)(1)(B); *see also* 47 C.F.R. § 1.80(a)(1).

<sup>11</sup> 47 U.S.C. § 312(f)(1).

<sup>12</sup> *See* H.R. Rep. No. 97-765, 97<sup>th</sup> Cong. 2d Sess. 51 (1982).

<sup>13</sup> *See Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4388 (1991).

<sup>14</sup> 47 U.S.C. § 312(f)(2).

<sup>15</sup> *See Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087, 17113-15 (1997) ("*Forfeiture Policy Statement*"), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section I.

<sup>16</sup> 47 U.S.C. § 503(b)(2)(D); *see also Forfeiture Policy Statement*, 12 FCC Rcd at 17100-01; 47 C.F.R. § 1.80(b)(4); 47 C.F.R. § 1.80(b)(4), note to paragraph (b)(4), Section II.

<sup>17</sup> In the past, we have issued Notices of Apparent Liability for \$4,000 to licensees that have reported similar public file violations. *Springfield Broadcasting Partners*, 21 FCC Rcd 1364 (Media Bureau 2006) (finding that a \$4,000 forfeiture was appropriate for a licensee's failure to retain in its public inspection file records concerning compliance with the children's programming commercial limits for two quarters, Children's Television Programming Reports for two quarters, and one TV issues/programs list); *Viacom Stations Group of Atlanta Inc.*, 20 FCC Rcd 19801

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confirm its compliance with Section 73.3526(e)(11)(iii). Accordingly, we find that the Licensee is apparently liable for a forfeiture in the amount of \$4,000 for its apparent willful and repeated violation of Section 73.3526. We believe that an admonition is also warranted for the Licensee's failure to provide information identifying each core program aired on its station to publishers of program guides in violation of Section 73.673.

#### IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's Rules, that Rocky Mountain Broadcasting Company is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of four thousand dollars (\$4,000) for its apparent willful and repeated violation of Section 73.3526 of the Commission's Rules.

11. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's Rules, that, within thirty (30) days of the release date of this *NAL*, Rocky Mountain Broadcasting Company SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the proposed forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, Pennsylvania 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, Pennsylvania 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

13. The response, if any, must be mailed to Office of the Secretary, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Washington, D.C. 20554, ATTN: Barbara A. Kreisman, Chief, Video Division, Media Bureau, and MUST INCLUDE the *NAL*/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Requests for full payment of the forfeiture proposed in this *NAL* under the installment plan should be sent to: Associate Managing Director- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.<sup>18</sup>

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(Media Bureau 2005) (concluding that a \$4,000 forfeiture was warranted for a licensee's failure to place in its public inspection file records concerning compliance with the children's programming commercial limits for five quarters).

<sup>18</sup> See 47 C.F.R. § 1.1914.

16. IT IS FURTHER ORDERED that copies of this *NAL* shall be sent, by First Class and Certified Mail, Return Receipt Requested, to Rocky Mountain Broadcasting Company, 455 Capitol Mall, Suite 210, Sacramento, California 95814, and to its counsel, Suzanne E. Rogers, Esquire, Law Offices of Suzanne E. Rogers, 455 Capitol Mall, Suite 210, Sacramento, California 95814.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman  
Chief, Video Division  
Media Bureau